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IN THE SUPREME COURT OF FLORIDA

RICHARD P. FRANKLIN,

Appellant,

Case No. SC13-1632

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRD JUDICIAL CIRCUIT,
IN AND FOR COLUMBIA COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

Appellant, RICHARD FRANKLIN, raises six issues in his direct appeal from convictions and sentence to death. Franklin was convicted of: (Count 1) murder in the first-degree of Sgt. Ruben Thomas; (Count 2) felony battery as a lesser included offense; (Count 3) possession of contraband by an inmate. References to Appellant will be to "Franklin" or "Appellant." Appellee, the State of Florida, was the prosecution below. This brief will refer to Appellee as such, or "the State."

The record on direct appeal is in 42 volumes that are numbered consecutively and conform with the requirements of Fla. R. App. P. 9.200. The record will be referenced by the letter "R" followed by the appropriate volume and page number "(R##: ####)." There is one volume of a supplemental record on appeal and will be cited as "Supp" followed by the appropriate page number "(Supp: ###)." Appellant's initial brief in this proceeding will be cited as "IB" followed by the appropriate page number "(IB: ###)."

STATEMENT OF THE CASE AND FACTS

This is a direct appeal in a capital case. A Grand Jury of Columbia County, Florida, indicted Richard Franklin for the first-degree murder of Sgt. Ruben Thomas. (R1: 10 – 11). A total of three charges were filed by way of indictment: (Count 1) first-degree murder of Sgt. Ruben Thomas; (Count 2) aggravated battery of a law enforcement officer; (Count 3) possession of contraband by an inmate. (R1: 10 – 11).

The jury found Franklin guilty as charged of: (Count 1) first-degree murder of Sgt. Ruben Thomas; and (Count 3) possession of contraband by an inmate. (R3: 511 – 12). Franklin was also found guilty of (Count 2) felony battery as a lesser included offense. (R3: 511).

Following a penalty phase, the jury returned an advisory sentence of death by a vote of nine to three for the murder of Sgt. Thomas. (R8: 1498). On August 2, 2013, the trial court imposed the following sentences: (Count 1) murder in the first-degree – death: (Count 2) felony battery – five years in the Department of Corrections; (Count 3) possession of contraband by an inmate – fifteen years in the Department of Corrections. (R9: 1741). The trial court imposed the sentences consecutively to one another, and to the sentences Franklin was previously serving in the Department of Corrections imposed by the Seventh Judicial Circuit Court in Volusia County. (R9: 1741).

An *Initial Brief* was filed by Franklin on May 8, 2014; however, the State never received service of Franklin's brief. On July 21, 2014, this Court granted the State's request for an extension of time to file an Answer Brief. The State's Answer follows.

Facts – Guilty / Innocence Phase

At the time of his murder, 24-year old Sergeant Ruben Thomas was working second shift at the Columbia Correctional Institution Annex in Columbia County, Florida. (R31: 1931). He was the dorm sergeant. (R31: 1967). Richard Franklin had been an inmate at Columbia Correctional for about six months. (R36: 2777). Franklin was serving a life sentence for first-degree murder, a life sentence for armed robbery, and a term of 30 years for aggravated battery with a firearm.[1] (R39: 3072 – 73).

Approximately three months before the murder, Franklin bought the murder weapon, a knife, from his cellmate Robert Acree. (R31: 2047; R36: 2777). Franklin was aware the knife was considered a deadly weapon and contraband in

[1] At the time of the murder, Franklin resided in T or "Tango" Dorm. T Dorm consists of an officer's station (also called the "bubble" or "control room") surrounded by 4 inmate "quads." A large octagon-shaped sallyport (sometimes referred to as a "vestibule" area) separates the officer's station from the quads. A second smaller sallyport (sometimes call the "vestibule room") provides an additional barrier between the entrance to the officer's station and the larger sallyport. (Supp: 15; R31: 1946 – 47).

prison. (R36: 2743 – 45, 2767, 2777). The knife was 10.5 inches long with a 6 inch blade and was 1.5 inches wide. (R33: 2369 – 70; R34: 2502; Supp: 28, 55 – 57).

About three or four days before the murder, Franklin began to perceive problems between himself and Sgt. Thomas. (R36: 2725-27, 2747, 2748). This began with an issue at a gate. (R36: 2726). Franklin was the last person in line and did not close the gate behind himself. (R36: 2726). Sgt. Thomas instructed Franklin to close the gate and swore at him. (R36: 2726). Franklin claimed that Sgt. Thomas called him a "dumb ass" and told him to close the gate in a disrespectful manner. (R36: 2726). Later, Franklin approached Sgt. Thomas in an attempt to explain that he did not appreciate being spoken to that way. (R36: 2727). According to Franklin, nothing positive came from this conversation. (R36: 2727). The final incident occurred when Franklin was the last person in line on the way to the dining hall. (R36: 2728). Sgt. Thomas instructed Franklin to hold the gate open and pull it close for everyone, which caused him to be the last person to get his meal. (R36: 2727). Franklin ultimately called his differences with Sgt. Thomas "childish." (R36: 2726).

The day of the murder, Franklin decided he wanted to settle his problems with Sgt. Thomas man to man. (R36: 2317). Franklin saw Sgt. Thomas and told him he wanted to handle their issues "head up." (R36: 2729). Franklin told Sgt. Thomas

they could go to the barber shop, or Sgt. Thomas could come to his cell to settle their differences. (R36: 2729 – 30). Franklin claimed Sgt. Thomas responded, "if you want me in there, you know how to get me down there." (R36: 2730).

That night, Franklin used the intercom in his quad to lure Sgt. Thomas to his cell by falsely reporting that there was water coming out of the air vent. (R31: 2049 – 50; R34: 2401; R36: 2730). Sgt. Thomas responded to quad 3 and asked, who's got the water coming out of their vent?" (R34: 2401; R34: 2426). Franklin said, "up here, Sarge," and called out his cell number. (R34: 2401).

Sgt. Thomas approached Franklin's cell and hesitated to enter but walked in when Franklin called him to the back to look at the vent. (R31: 2049). When Sgt. Thomas entered Franklin's cell he was eating a bag of chips. (R36: 2731; R36: 2749). He did not look ready to fight. (R31: 2059). As Sgt. Thomas looked up at the vent, Franklin said to him, "what's up? What's up now?" (R31: 2079; R36: 2731; R36: 2750). According to Franklin, Sgt. Thomas laughed and continued eating his chips, so Franklin hit him in the mouth while Sgt. Thomas was still looking up at the vent. (R34: 2404 – 05; R36: 2731 – 32, 2750 – 51, 2778). The punch caught Sgt. Thomas completely off guard. (R31: 2052, 2060). Franklin hit Sgt. Thomas again and busted his nose. (R31: 2052). Sgt. Thomas started to bleed all over the cell. (R31: 2052, 2057; R32: 2095).

Franklin and Sgt. Thomas then grappled with each other in the cell. (R36:

2732). They ended up on the ground with Franklin on top. (R36: 2733). Sgt. Thomas did not hit Franklin. (R36: 2752). Sgt. Thomas was able to get to his radio but Franklin knocked it out of his hand. (R36: 2752). Sgt. Thomas then attempted to hit the panic button on his personal body alarm, but Franklin was able to hit that away as well. (R31: 2053; R36: 2752).

Before long, Sgt. Thomas fought his way out of the cell and proceeded down the catwalk to the stairs in an attempt to escape to safety. (R34: 2405). Franklin armed himself with a knife, and chased Sgt. Thomas down the stairs to the quad door. (R32: 2095; R33: 2295, 2334; R36: 2734; R39: 3148). Franklin wanted to catch Sgt. Thomas and "whup his ass." (R36: 2712, 2738, 2756, 2769). Sgt. Thomas reached the door to the vestibule room of the officer's station, but Franklin was able to catch the door and keep it open about six inches. (R34: 2503; R36: 2711, 2735 – 36, 2776; Supp: 55 – 57). Franklin did not think he was going to be able to catch Sgt. Thomas but when he did, he described the feeling as, ". . . an excitement like, oh, I got you . . .." (R36: 2738, 2777).

Franklin and Sgt. Thomas struggled over the door. Sgt. Thomas was on the other side of the door trying to pull it closed. (R33: 2295 – 96; R36: 2712, 2775).[2]

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[2] Sergeant Thomas was in the vestibule room when he was murdered. Franklin was on the other side of the door in the larger sallyport area surrounding the officer's station. (Supp: 15, 20, 21).

Franklin said he tried to get Sgt. Thomas to let go of the door by "poking" his hand with his knife; however, witnesses saw Franklin striking Sgt. Thomas with the knife. (R32: 2098; R36: 2713, 2756; Supp: 58 – 61).

Officer Myer observed the attack from the officer's station and made an emergency call over the radio. (R31: 1998, 2002; R32: 2152 – 53). As the fight continued over the door, Ofc. Myer, saw Franklin striking Sgt. Thomas, but did not see a knife. (R36: 1998, 2713 – 14, 2773). Franklin admitted that Sgt. Thomas did not defend himself. (R36: 2775). Sgt. Thomas did not have pepper spray or any other weapon in his hands. (R36: 2757).

Franklin admitted to stabbing Sgt. Thomas in order to prevent him from reaching the safety of the vestibule room to the officer's station. (R36: 2757, 2772). Franklin claimed he did not intend to kill Sergeant Thomas or to stab him in the throat or any vital area, but admitted he must have stabbed the Sergeant with enough force to fracture his skull, as well as stabbing Sgt. Thomas' chest. (R36: 2773 – 74, 2738). Franklin also admitted he would not have dropped the knife if he was able to get the door open. (R36; 2769 – 70).

Eventually Franklin stabbed Sgt. Thomas in the neck and head several times, which caused Sgt. Thomas to crumple to the ground. (R32: 2098). At this point, all of the inmates in quad 3 were up near the glass window trying to see Franklin. (R33: 2287). When the struggle was over Franklin turned around, walked over to

the glass facing quad 3, and made a throat slashing gesture with his right thumb. (R33: 2280 – 81, 2296 – 97; R34: 2414; R36: 2759).

Franklin then found the door to quad 2 open, and entered. (R36: 2717 – 18). He had blood on his clothing and was still holding the bloody knife. (R32: 2113). Ofc. Myer lost sight of Franklin at that time. (R31: 2000 – 03).

Backup officers began to arrive. (R31: 2002). The first two officers went to render aid to Sgt. Thomas. (R32: 2158). They eventually got him on a stretcher, removed him from T Dorm, and took him to the medical unit. (R32: 2459 – 60). Sgt. Thomas was trying to talk as he was being transported on the stretcher, but no one could tell what he was saying. (R32: 2159).

Officer Peterson and Officer Brewer arrived at T Dorm and started locking down cells. (R31: 2003 – 05). They first locked down the cells in quad 1 and then continued to quad 2. (R31: 2004 – 05: R32: 2167 – 68, 2184 – 85; R36: 2717 – 18). They were not aware that Franklin was in quad 2.

After ordering the inmates in quad 2 to their cells, Franklin was still walking around. (R32: 2168). Ofc. Brewer gave a verbal command to Franklin, but Franklin did not move and remained defiant. (R32: 2168). Suddenly, Franklin struck Ofc. Brewer in the face dropping him to the ground. (R31: 2007; R32: 2099, 2188). Ofc. Brewer had not seen it coming. (R32: 2178). It was a sucker punch that crushed the eye socket, resulting in permanent injuries. (R32: 2171 –

72; R36: 2718, 2764; Supp. 29, 71). Franklin then jumped on top of Ofc. Brewer and took his pepper spray.[3] (R31: 2007; R32: 2099 – 2100: R36: 2765). Ofc. Peterson sprayed Franklin with his own pepper spray and Franklin got off Ofc. Brewer. (R31: 2008; R32: 2188).

Ofc. Peterson grabbed Ofc. Brewer and ran for the quad 2 door. (R31: 2010; R32: 2190). As the door was shutting behind them Franklin ran up like he wanted to stab Ofc. Brewer, but the door closed before Franklin got there. (R31: 2009 – 11; 32: 2099). Franklin ran to the door and started shaking it violently. (R31: 2012; R32: 2191). At some point he also threw a combination lock at the glass door. (R31: 2012).

A standoff then began between Franklin and the prison officers. Franklin was repeatedly told to "cuff up," meaning drop the knife, turn around, and submit to authority, but he refused each time. (R32: 2242; R33: 2306 – 07; R36: 2762 – 61). When Captain Nipper arrived, she attempted to get Franklin to surrender. (R32: 2229, 2237 – 38, 2242 – 43). Franklin responded by saying, "Bitch, you ain't taking me alive." (R32: 2229).

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[3] Pepper spray seemed to be used interchangeably at times with "mace," "Mark-IV," or an "MK-4" gas canister by some of the witnesses at trial. Technically, the MK-4 is OC pepper spray, which irritates the eyes. (R33: 2267 – 68). The "MK-9" or "Mark IX" is larger and contains CS gas, which mostly interferes with breathing. (R33: 2268, 2307).

The prison's emergency response team, known as "DART" (Designated Armed Response Team) advised Captain Nipper over the radio that they were going to enter quad 2 through the back fire exit door. (R32: 2232, 2243). Although Franklin denied hearing this information come over Captain Nipper's radio he reacted by immediately going to the back door, and using some dirty laundry to tie the fire exit door shut so that it could not be opened from the outside. (R31: 2014 – 15; R32: 2232, 2243; R33: 2263; R36: 2721, 2766; Supp: 24).

Franklin then retrieved the knife and held it up to the window. (R31: 2018). He had the knife in one hand and Ofc. Brewer's pepper spray in the other. (R31: 2018; R32: 2226). Franklin beat his chest and told the officers, "come on, let's get it." (R36: 2766).

Franklin then went into cell 2108 and busted the head off the sprinkler. (R32: 2099, 2236). This caused the fire alarm to emit an ear piercing sound, the strobe lights to go off, and a flood of water to erupt from that cell. (R32: 2236). The water went under the quad door and flooded the area almost ankle deep, even reaching the officer's station door where most of Sergeant Thomas' blood was pooled. (R32: 2236). The extent of the flooding was so great that bloody water was rushing out the front door of T dorm by the time Assistant Warden Anderson arrived. (R33: 2304 – 05; Supp: 35 – 36, 50).

Other additional backup officers arrived at the quad 2 door by that time. (R31:

2017; R32: 2238). By then, approximately 10 officers were present. (R33: 2262; R33: 2382). Franklin, with the knife in his hand, turned to Sergeant Minnich, who was standing at the glass, and made another throat-slashing motion. (R33: 2264).

A plan was developed to fire a non-lethal round at Franklin through a porthole in the ceiling of the quad. (R32: 2239 – 40). Assistant Warden Anderson again attempted to get Franklin to comply with orders. (R32: 2242; R33: 2306 – 07; R36: 2761). When that failed, Anderson then instructed another officer to use CS gas, pepper spray, under the door of quad 2 to attempt to get Franklin to comply. (R33: 2307). Franklin responded by spraying the officers with the MK-4 he took from Ofc. Brewer. (R33: 2312).

Apparently angered by the CS gas, Franklin then pulled the knife out from his waistband and said to Assistant Warden Anderson, "I'm going to get another one of y'all, y'all come on. I'm ready for you." (R33: 2307 – 08, 2312, 2375; R36: 2724). Franklin started thumping his chest and said, "you're going to shoot me, shoot me, kill me." (R33: 2374). Despite the threat and behavior, Assistant Warden Anderson made yet another attempt to get Franklin to surrender peacefully. (R33: 2308).

When Franklin still refused to comply, Assistant Warden Anderson approved the use of a rubber pellet as non-lethal force. (R32: 2242, 2245; R33: 2309, 2362). The round was fired and Franklin went to the ground. (R32: 2245). As Franklin

was trying to get up, officers entered the quad. (R32: 2245). Chemical agents were administered again and orders were given to Franklin to drop the knife. (R32: 2245; R33: 2265 – 66). Officers were able to get the knife from Franklin and secure him in handcuffs. (R31: 2023 – 24; R32; 2245; R33: 2378 – 79).

The physical evidence was consistent with the testimony of the witnesses and Franklin. Sgt. Thomas' blood was found on the stairway in Franklin's quad and the walls of Franklin's cell. (R35: 2577-79; Supp: 42 – 45). There was also blood on the railing outside Franklin's cell. (R35: 2578). The blood sample contained a mixture of DNA with no less than three individual contributors. (R35: 2578). Franklin and Ofc. Brewer were excluded as contributors to the mixed DNA profile, but Sgt. Thomas was included as a contributor. (R35: 2579). None of the blood collected from Franklin's cell or quad matched Franklin. (R35: 2579). Each of the ten blood samples collected from the inside and outside of the door where Sgt. Thomas was killed matched Sgt. Thomas; none matched Franklin. (R35: 2583 – 86).

Sgt. Thomas was stabbed at least 12 times. (R35: 2638). There were eight total defensive wounds to his arms as well as the injuries to Sgt. Thomas' head, neck and chest. (R35: 2638, 2640 – 46). The major injuries included a stab to the left side of Sgt. Thomas' scalp which was about four inches deep. (R35: 2640). This wound fractured the left temporal bone and the outer table of the skull. (R35:

2641). This required a considerable amount of force to fracture the facial bones. (R35: 2641). After the skull fracture occurred, the knife was plunged deeper causing internal bleeding and bruise towards the eye. (R35: 2641). Sgt. Thomas was also stabbed near his right eye and right ear. (R35: 2642 – 43; Supp: 7). This wound was along the jawbone, about two inches deep through the soft tissue of the cheek. (R35: 2643). There was a stab wound to the left side of Sgt. Thomas' neck about a half inch deep. (R35: 2643). This wound injured the muscles near the clavicle and collar bone. (R35: 2644). The fatal wound was another stab to the neck that cut Sgt. Thomas' jugular vein, went inside the collar bone and into the chest cavity puncturing the left lung. (R35: 2645).

Sgt. Thomas did not die instantly. (R35: 2647). He first went into shock and lost about 1/5 of his blood, including 900 cubic centimeters of blood into his chest cavity, which made breathing difficult due to a collapsed lung. (R35: 2645, 2647). Sgt. Thomas remained conscious for some time, and was trying to speak as he was transported to the medical unit. (R32: 2159; R35: 2647).

Sgt. Thomas suffered a number of bruises, contusions, scrapes, and cuts that were not caused by a sharp object. (R35: 2631 – 34). The punch to his mouth was so hard it caused an imprint of his teeth on the inner surface of his lip. (R35: 2633; Supp: 5). He was also stabbed in the lip. (R35: 2633 – 34; Supp: 3). Sgt. Thomas had abrasions on his nose, wrist, shoulder, chest, foot, knee, forearm, and the front

and back of his upper arm. (R35: 2693). All of the wounds were inflicted when Sgt. Thomas was alive and none of them would have rendered him immediately unconscious. (R35: 2648).

The jury found Franklin guilty of first-degree premeditated murder, felony battery (as a lesser included offense of aggravated battery on a law enforcement officer), and possession of contraband by an inmate. (R3: 511 – 12; R38: 3002). At the penalty phase, the State presented evidence of Franklin's prior convictions for first-degree murder, robbery with a firearm, and aggravated battery with a firearm. (R39: 3072 – 73). Sgt. Thomas' mother and his fiancée read prepared victim impact statements. (R39: 3088 – 3015).

Franklin called his father and his sister to testify in mitigation. (R39: 3107 – 39). Against counsel's advice, Franklin took the stand again as well. (R39: 3131, 3136; R39: 3139 – 53). Franklin admitted he was previously convicted of first-degree premeditated murder, where he shot a man in the leg. (R39: 3139 – 40). A month after that murder, but prior to the conviction, Franklin shot another man in the leg. (R39: 3147 – 48).

Franklin claimed that although he did purposefully stab Sgt. Thomas and cause his death, he did not intend to kill him. (R39: 3148 – 49). Franklin said he did not feel there was anything to say to the family that would make a difference, and felt an apology would make the situation worse. (R39: 3142). Franklin testified:

> It's my fault. The evidence, regardless if I – regardless if I knowed I did it, if I didn't know that I did it, it's the result of my actions, so I'm not saying that it was no - - I was intentionally doing it. I'm confessing to the fact that it occurred, man. That's what happened. It's evident that that's what happened.
>
> I can't refute – what I'm refuting is the fact that they're saying it was intentional, man. That's the only challenge that I can never change. I never refuted the fact that, okay, I done fucked up and jooged[4] this man in his neck and then he died. I'm not arguing that. That's not the challenge.
>
> The only thing that I'm challenging is they trying to diagnose me with a psychological state of mind saying what my intentions was. That's the only challenge that I ever challenged. I never challenged saying that I ain't never killed nobody. The only thing I'm challenging is them trying to, you know, be a psychologist and say at this moment they can judge my mental character state. That's the only challenge that I ever had, man.

(R39: 3152 – 53).

After hearing the victim impact statements and mitigation, the jury recommended a death sentence by a vote of nine to three. (R40: 3238). Following a *Spencer*[5] hearing, Franklin was sentenced to death on August 2, 2013. (R9: 1723

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[4] "Jooged" means stabbed. Franklin testified in the guilt phase, "Yeah, we struggling over the door and I started, you know, just jooging his arms, that's where the little marks come from. I was attempting to break him off the door so I could get in there. A little jooging, a little stabbing, it wasn't doing nothing." (R26: 2713 – 14).

[5] *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

– 42; R42: 3350).

The trial court found five aggravating circumstances to exist beyond a reasonable doubt:

(1) the capital felony was committed by a person under sentence of imprisonment or placed on community control or on felony probation (great weight);

(2) the defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person (great weight);

(3) the capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws (substantial weight);

(4) the capital felony was especially heinous, atrocious, or cruel - HAC (very great weight),

(5) the capital felony was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification - CCP (very great weight). (R42: 3310 – 3332).

The court found no statutory mitigating circumstances and seven non-statutory mitigating circumstances:

(1) the defendant's childhood and adolescence were troubled, unstable, and violent (little weight);

(2) the defendant was a great brother and uncle (little weight);

(3) the defendant suffered a head injury from a gunshot wound as a teenager (some weight);

(4) the defendant's family effectively abandoned the defendant (little weight);

(5) the defendant intervened when a fellow inmate was being attacked (some weight);

(6) the defendant exhibited good behavior during trial (little weight); and

(7) the defendant exhibited remorse (very little weight). (R42: 3334 – 50).

After weighing the aggravation and mitigation, the trial court determined that "the nature and quality of the mitigating evidence pales in comparison to the enormity of the aggravating factors proven in this case." (R42: 3350). This appeal follows.

SUMMARY OF ARGUMENT

I. When viewed in the light most favorable to the state, the evidence was legally sufficient to sustain a conviction for first-degree murder. Multiple eye-witnesses saw Franklin armed with a knife, chase Sgt. Thomas out of his cell, down the catwalk, and catch him at the door to the quad. When Franklin caught Sgt. Thomas he described a feeling of excitement. While they struggled over the door, Franklin used the opportunity to stab Sgt. Thomas at least 12 times. After the fatal blow, Sgt. Thomas crumpled to the floor, and Franklin turned to the inmates gathered on the glass and made a throat slashing gesture with his right hand. At no point did anyone see Sgt. Thomas strike or hit Franklin.

II. The hallmarks of a case of CCP occur when a defendant lies in wait for his victim, procures a weapon, and the murder is carried out as a matter of course. In this case, Franklin lured Sgt. Thomas to his cell, waited, and sprung an unprovoked attack. When Sgt. Thomas escaped the initial attack, Franklin calmly obtained the knife hidden in his cell and chased Sgt. Thomas. Franklin caught Sgt. Thomas and prevented an escape to safety as he wedged his foot in the door to the vestibule. As the two struggled over the door, Franklin repeatedly stabbed at Sgt. Thomas as a matter of course. Because Franklin formed a plan, laid in wait for his victim, procured a weapon, and murdered Sgt. Thomas as matter of course, the CCP aggravator was appropriately applied.

III. HAC has been applied to cases where the victim was in fear for his life, was repeatedly stabbed, and the defendant was utterly indifferent to the suffering of the victim. Here, Franklin prevented Sgt. Thomas from making two calls for help as he knocked away Sgt. Thomas' radio and personal body alarm. Sgt. Thomas' fear was apparent has he ran for the safety of the officer's station outside of quad 3. When Franklin caught Sgt. Thomas he used the six inch homemade blade to stab Sgt. Thomas in the head, neck, chest, face, and arms. Sgt. Thomas did not die immediately and was trying to talk as he was being carried to the medical unit. Because Sgt. Thomas was aware of his own peril, was stabbed numerous times, was subject to prolonged suffering, and remained conscious even after the attack ended, the HAC aggravator was appropriately applied.

IV. A review of Fla. Stat. § 921.141(5)(j), through the cannon of statutory construction known as *in pari materia*, provides a clear understanding of the legislature's intent in enacting the murder of a law enforcement officer aggravator. Because a correctional officer is equated with a law enforcement officer within the other statues that punish violence against law enforcement officers, the aggravator in question was intended to apply to correctional officers. Therefore the trial court properly found the aggravator of murder of a law enforcement officer in lawful performance of his duties.

V. This Court has previously rejected Franklin's argument that per the statutory language, the disruption of any governmental function must be the primary goal when a murder is committed in order for the aggravator of § 921.141(5)(g) to apply. The disrupt or hinder a governmental function aggravator was intended to apply in precisely this situation because Sgt. Thomas was murdered due to his official duties as a Correctional Officer. Then following the murder Franklin sough to disrupt the normal functions of the Columbia Correctional Institution, by assaulting the prison guards, staging a standoff, blocking access to a fire-exit door, breaking fire alarm sprinklers, and flooding the entire T Dorm of CCI.

VI. This Court has consistently rejected claims that Florida's sentencing procedures are facially unconstitutional under *Ring v. Arizona*. Moreover Franklin ignores the fact he was previously convicted of a violent capital felony before being sentenced to death for the murder of Sgt. Thomas. This Court has also consistently rejected *Ring* claims in cases such as this where the defendant has been previously convicted of a felony.

VII. The murder of Sgt. Thomas is among the most aggravated and least mitigated of first-degree murders. The aggravators of HAC, CCP, prior capital felony are the most serious and weightiest within the capital sentencing scheme. In addition, the victim in this case was a law enforcement officer in performance of

his official duties. Franklin offered no statutory mitigation and none was found; the trial court however, did assign weight to seven non-statutory mitigating circumstances. The evidence in the case shows the murder of Sgt. Thomas was senseless, unprovoked and carried out as a matter of course. This case resembles *Kilgore v. State*, 688 So. 2d 895 (Fla. 1996), but here there is significantly more aggravation and considerably less mitigation. Accordingly, Franklin's sentence should be affirmed as proportional.

ARGUMENT

I. THE EVIDENCE WAS LEGALLY SUFFICIENT TO SUSTAIN A CONVICTION FOR PREMEDITATED FIRST-DEGREE MURDER.

Franklin asserts the evidence presented at trial was insufficient to sustain a conviction for first-degree murder and at best supports only a conviction for second-degree murder. (IB: 35). The evidence presented at trial confirms that Franklin lured Sgt. Thomas to his cell, sprung an unprovoked attack, chased Sgt. Thomas with a large knife, and after catching up to him, repeatedly stabbed Sgt. Thomas until he crumpled to the floor. Finally after Sgt. Thomas stopped fighting Franklin turned and made a throat-slashing motion to the inmates gathered on the glass. (R32: 2097 – 98; R33: 2296). The evidence shows Franklin had ample time to plan and contemplate his crime. Once the attack began and Sgt. Thomas escaped, Franklin pressed forward with his plan to murder Sgt. Thomas. Therefore, after viewing the evidence in the light most favorable to the state, a rational trier of fact could find the existence of the elements of first-degree murder beyond a reasonable doubt.

a. Standard of Review

This Court applies a *de novo* standard of review when examining the sufficiency of the evidence to sustain a conviction for first-degree murder. *See Jones v. State*, 790 So. 2d 1194, 1197 – 98 (Fla. 1st DCA 2001); *see also Fisher v.*

State, 715 So. 2d 950 (Fla. 1998). "In determining the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt." *Gregory v. State*, 118 So. 3d 770, 785 (Fla. 2013) (quoting *Simmons v. State*, 934 So. 2d 1100, 1111 (Fla. 2006)); *Bradley v. State*, 787 So. 2d 732, 738 (Fla. 2001).

b. **The Murder of Sgt. Ruben Thomas**

To prove the crime of first-degree murder of Sgt. Thomas, the State must prove: (1) Sgt. Thomas is dead; (2) the death was caused by the criminal act of Franklin; and (3) there was a premeditated killing of Sgt. Thomas. *See,* Fla. Std. Jury Instr. (Crim.) 7.2. The only element at issue is whether the murder of Sgt. Thomas was premeditated. "Premeditation is a fully formed conscious purpose to kill that may be formed in a moment and need only exist for such time as will allow the accused to be conscious of the nature of the act he is about to commit and the probable result of that act." *Asay v. State,* 580 So. 2d 610, 612 (Fla.1991).

The undisputed facts from the direct evidence establish that Franklin lured Sgt. Thomas to his cell by faking a maintenance call. Using the intercom, Franklin told Sgt. Thomas there was water coming from the air vent, and it needed to be examined. (R31: 2049 – 50; R34: 2401; R36: 2730). Sgt. Thomas responded to quad 3, and upon further instruction from Franklin went to his cell. (R34: 2401).

Sgt. Thomas went into Franklin's cell, and began to look at the air vent; Franklin then caught Sgt. Thomas by surprise when he punched him in the face. (R34: 2404 – 05; R36: 2731 – 32, 2751 – 51, 2778). Franklin admitted to punching Sgt. Thomas without provocation. (R36: 2750). The two men struggled and Franklin knocked away Sgt. Thomas' radio and panic button, but only after Franklin believed Sgt. Thomas had pushed his panic button. (R36: 2733 – 34, 2752 – 54). Sgt. Thomas had not pushed the panic button as Franklin believed.

Bloodied and without his radio or panic button, Sgt. Thomas escaped the cell and began to run for help. (R33: 2278; R34: 2405). As he made his way down the catwalk and down the stairs to the quad 3 door, multiple witnesses saw Sgt. Thomas bleeding profusely from the face. (R32: 2096; R33: 2278, 2292 – 93). Not satisfied, Franklin armed himself with a knife and chased after Sgt. Thomas. (R33: 2278, 2292 – 95). Franklin caught Sgt. Thomas at the security door and as Sgt. Thomas was trying to close the door, Franklin used his foot to stop the door from closing. (R34: 2503; R36: 2711, 2735 – 36, 2776). Franklin then admittedly stabbed Sgt. Thomas through the doorway as the two struggled over the door. (R36: 2713 – 14). As Franklin stabbed Sgt. Thomas with a fatal blow to his neck and chest, Sgt. Thomas crumpled to the floor. (R32: 2098). Sgt. Thomas had been stabbed at least 12 times in the head, neck, chest, arms and hands. (R35: 2638, 2640 – 46). After he stabbed Sgt. Thomas, Franklin turned to the crowd of inmates

gathered on the glass and made a throat-slashing motion with his right hand. (R33: 2280 – 81, 2296 – 97; R34: 2414; R36: 2759).

Regardless of his actions and admissions, Franklin maintains he did not intend to kill Sgt. Thomas. (R36: 2715, 2736, 2738). In support Franklin looks to his own testimony, and claims that had he intended to kill Sgt. Thomas he would have dispatched him sooner.

Franklin maintains the state did not prove premeditation and relies on his own self-serving statements as justification of his position. (IB: 38 – 39). In support, Franklin cites to *Coolen v. State*, 696 So. 2d 738 (Fla. 1997) and *Kirkland v. State*, 684 So. 2d 732 (Fla. 1996) as examples of similar cases where this Court reversed convictions for first-degree murder because premeditation was not proved through circumstantial evidence. Each of these cases is distinguishable.

In *Coolen v. State*, 696 So. 2d 738 (Fla. 1997), the defendant asserted he killed the victim in self-defense. *Coolen*, 696 So. 2d at 741 – 43. The state's evidence of premeditation consisted of an unprovoked attack between the defendant and the victim, a prior fight between the victim and the defendant, and the nature of the wounds to the victim. *Coolen*, 696 So. 2d at 741. The state asserted the defensive wounds on the victim were not indicative of Coolen's claim of self-defense. *Id.* This Court found the evidence presented by the state was consistent with an unlawful killing, but inconsistent with premeditation. *Id.* at 741 – 42. This Court

based its decision on the contradictions in testimony from various eyewitnesses; some of which established premeditation, and the conflicting evidence which was consistent with mutual combat. *Id*. In this case, the eyewitnesses all agree that Franklin chased Sgt. Thomas with a knife, caught him, and did not stop stabbing Sgt. Thomas until he fell to the floor.

In *Kirkland v. State*, 684 So. 2d 732 (Fla. 1996), the victim was murdered by a series of stabs or slashes to her neck, which were described as irregular. *Kirkland*, 684 So. 2d at 733 – 34. This Court reversed Kirkland's conviction for first-degree murder because: (1) there was no indication of a premeditated intent to kill the victim; (2) there were no witnesses to the events immediately preceding the homicide; (3) no evidence suggested that Kirkland made special arrangements to procure the murder weapon ahead of time; and (4) there was no evidence of a preconceived plan to commit the murder. *Id*. at 735. With only circumstantial evidence, this Court found that the evidence presented by the state did not dispel every reasonable hypothesis of innocence; facts and reasoning which are distinctly different from this case. *Id*. at 735 – 36. Here, Franklin formed a plan, procured a weapon and multiple witnesses saw not only the events immediately preceding the murder, but also the actual murder of Sgt. Thomas.

This case is more comparable to *Miller v. State*, 42 So. 3d 204 (Fla. 2010). In *Miller*, the defendant confessed to walking several miles to Smith's house with the

intent to rob her using a knife. *Miller*, 42 So. 3d at 210. During the robbery Miller was interrupted by Haydon. *Id*. While Miller and Haydon were fighting Smith escaped. *Id*. Miller disabled Haydon and then "deliberately followed Smith out the back door and stabbed her several times rather than ending the encounter." *Id*. at 228. This Court found that "Miller's statements that there was a break in his initial struggle with Smith during the attempted robbery and the ultimate decision to fatally stab her indicate that he was conscious of the nature of the act he was about to commit and the probable result of that act." *Id*.

Here, Franklin's actions mirror those of the defendant in *Miller*. Franklin lured Sgt. Thomas to his cell and sprung an unprovoked attack. When the initial attack was interrupted Franklin made the choice to procure a weapon, chase, and stab Sgt. Thomas instead of abandoning the attack. *See Miller*, 42 So. 3d at 228. Premeditation in this case is thus established by Franklin arming himself with a knife after initial attack, chasing Sgt. Thomas, and repeatedly stabbing him.

In both *Kirkland* and *Coolen* the prosecution used circumstantial evidence to prove premeditation; however, in this case, premeditation was proved through direct evidence. Multiple eyewitnesses saw Franklin pursue Sgt. Thomas out of his cell and stab Sgt. Thomas while struggling over the door.

Franklin's assertion that he did not intend to kill Sgt. Thomas after chasing and stabbing him is simply not believable. Franklin claims he armed himself only for

protection from other guards who would retaliate for the attack on Sgt. Thomas. (R36: 2735). Yet instead of taking a defensive position within quad 3, Franklin chased after Sgt. Thomas. (R32: 2095; R33: 2295, 2234; R36: 2734; R39: 3148). Even at the moment Franklin caught Sgt. Thomas, he had an opportunity to let him close the door and escape. But instead, Franklin was excited when he caught Sgt. Thomas and thought to himself "I got you." (R36: 2738, 2777). Such actions and admissions do not precede an unintended death, but are evidence of a preplanned intent to kill.

When viewed in the light most favorable to the state, a rational trier of fact could find the existence of each element of first-degree murder in this case. Franklin had ample opportunity to assault Sgt. Thomas and "whup his ass" before he chased him, prevented his escape, and stabbed him in the head, neck and chest. Franklin's actions are a direct contradiction of his stated intentions because there was no immediate threat from the prison guards and Franklin did not take a defensive position within quad 3. Franklin chose to arm himself with a knife, chase Sgt. Thomas, prevent his escape and stab him. Because he had multiple opportunities to abandon the attack but chose to murder Sgt. Thomas there is sufficient evidence to sustain a conviction for first-degree murder, and this Court should affirm Franklin's conviction.

II. THE TRIAL COURT DID NOT ERR IN INSTRUCTING AND FINDING THE AGGRAVATING CIRCUMSTANCE OF COLD, CALCULATED AND PREMEDITATED MURDER.

Franklin contends the trial court erred by instructing and finding the aggravator of cold, calculated, and premeditated proven beyond a reasonable doubt. (IB: 42). While Franklin asserts the murder of Sgt. Thomas was "fortuitous," the evidence shows Franklin's plan and commitment to murder Sgt. Thomas. (IB: 48). A trial court is required to give all instructions to the jury regarding aggravating or mitigating circumstances when credible and competent evidence had been presented. Franklin's actions in luring Sgt. Thomas to his cell, attacking him, preventing his escape, and stabbing him provide competent substantial evidence of CCP.

a. Standard of Review

A challenge to a specific jury instruction should be reviewed on an abuse of discretion standard. *Carpenter v. State*, 785 So. 2d 1182, 1200 (Fla. 2001). "[D]iscretion is abused only where no reasonable [judge] would take the view adopted by the trial court." *Buzia v. State*, 926 So. 2d 1203, 1216 (Fla. 2006) (quoting *Huff v. State*, 569 So. 2d 1247, 1249 (Fla. 1990)). "A trial court has wide discretion in instructing the jury, and the court's decision regarding the charge to the jury is reviewed with a presumption of correctness on appeal." *Patrick v. State*, 104 So. 3d 1046, 1058 (Fla. 2012) (citing *Carpenter*, 785 So. 2d at 1199 – 1200).

"A trial court's ruling on an aggravating circumstance is a mixed question of law and fact and will be sustained on review as long as the court applied the right rule of law and its ruling is supported by competent substantial evidence in the record." *Ford v. State*, 802 So. 2d 1121, 1133 (Fla. 2001).

b. The Jury Instruction of Cold, Calculated, and Premeditated Aggravator

When evaluating the proposed jury instruction, a trial judge is required to instruct the jury on all aggravating and mitigating factors when credible and competent evidence of such has been presented to the jury. *Welch v. State*, 992 So. 2d 206, 215 (Fla. 2008) (citing *Stewart v. State*, 558 So. 2d 416, 420 (Fla. 1990)). Although an aggravating factor must be proven beyond a reasonable doubt for purposes of sentencing, a jury instruction on an aggravator "need only be supported by credible and competent evidence." *Welch*, 992 So. 2d at 215 (citing *Hunter v. State*, 660 So. 2d 244, 252 (Fla. 1995)). In order for the CCP aggravator to apply the defendant must have formed a careful plan to commit the murder, must have had the opportunity for cool refection and heightened premeditation, and there must be no moral or legal justification for the murder. *See Victorino v. State*, 23 So. 3d 87, 105 – 06 (Fla. 2009).

In the present case, the undisputed testimony and statements from Franklin show that Franklin felt Sgt. Thomas had not treated him with respect and sought revenge. (R36: 2726 – 30). Franklin's stated intention was to "whup his ass."

(R36: 2712). Franklin faked a maintenance problem in order to lure Sgt. Thomas to his cell, and attacked Sgt. Thomas attacked without provocation. (R31: 2049 – 50; R34: 2401, 2404 – 05; R36: 3730 – 32, 2750 – 51). After Sgt. Thomas escaped Franklin obtained a large knife, chased Sgt. Thomas, prevented his escape, and stabbed Sgt. Thomas. (R32: 2095; R33: 2295, 2334; R34: 2503; R36: 2711, 2734 – 36; Supp: 55 – 57).

Based on the undisputed evidence presented to the jury, the trial court did not err in giving the CCP instruction to the jury because credible and competent evidence showed the murder of Sgt. Thomas was CCP.

c. The Trial Court Found the CCP Aggravator and Assigned Weight

The trial court determined the state proved the CCP aggravator beyond a reasonable doubt and assigned the aggravator "very great weight." (R9: 1730 – 33). In order to find CCP as an aggravating factor the trial Court must determine:

> (1) the killing must have been the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); and (2) the defendant must have had a careful plan or prearranged design to commit murder before the fatal incident (calculated); and (3) the defendant must have exhibited heightened premeditation (premeditated); and (4) there must have been no pretense of moral or legal justification.

Victorino v. State, 23 So. 3d 87, 105 – 06 (Fla. 2009) (citing *Lynch v. State*, 841 So. 2d 362, 371 (Fla. 2003)). "CCP can also be established by evidence of 'advance procurement of a weapon, lack of resistance or provocation, and the

appearance of a killing carried out as a matter of course.'" *Eaglin v. State*, 19 So. 3d 935, 948 (Fla. 2009) (quoting *Davis v. State*, 859 So. 2d 465, 479 (Fla. 2003). '"[D]eliberate ruthlessness' is 'necessary to raise . . . premeditation about that generally required for premeditated first-degree murder'" *Buzia*, 926 So. 2d at 1214 (quoting *Fennie v. State*, 648 So. 2d 95, 99 (Fla. 1994).

This Court has recognized the hallmarks of CCP to be a case where the defendant lies in wait for his victim, procures a weapon, and the murder is carried out as a matter of course. *McCoy v. State*, 132 So. 3d 756, 770 (Fla. 2013) (citing *e.g. Buzia*, 926 So. 2d at 1214 – 15 ("[T]he facts supporting [the CCP aggravator] must focus on the manner of course . . . ." (quoting *Looney v. State*, 803 So. 2d 656, 678 (Fla. 2001))). In terms of procuring a weapon, a defendant need not obtain a weapon prior to a criminal episode, but what is important is that a defendant makes a conscious decision to obtain a weapon for the purpose of committing a murder. *See Buzia*, 926 So. 2d at 1215; *Mason v. State*, 438 So. 2d 374, 379 (Fla. 1983) (finding the CCP aggravator even though the defendant did not procure his own murder weapon prior to arriving at the scene).

This case fits all the hallmarks of a case with the CCP aggravator as pronounced in *McCoy*, and shown in *Buzia*. Franklin lured Sgt. Thomas to his cell and then lay in wait. (R31: 2049 – 50; R34: 2401). When Sgt. Thomas was distracted, Franklin struck by sucker punching him in the face. (R31: 2052, 2060;

R34 2404 – 05). When Sgt. Thomas escaped, Franklin obtained a knife and pieced together the blade and handle. (R33: 2295, 2334). Franklin then chased Sgt. Thomas and prevented his escape. (R36: 2711, 2735 – 36, 2776). While Sgt. Thomas struggled to close the door, Franklin succeeded in keeping it open, which allowed him the opportunity to stab Sgt. Thomas. (R32: 2098; R36: 2713, 2756). The struggle over the door ended only when Franklin hit Sgt. Thomas with the fatal blow to his neck and chest, causing Sgt. Thomas to crumple to the floor. (R32: 2098).

The trial court looked directly to Franklin's plan to lure Sgt. Thomas, and his advance procurement of the knife in applying CCP. (R9: 1732). The murder of Sgt. Thomas was not "fortuitous" as Franklin asserts,[6] but was the product of Franklin's planned attack and calm decision to obtain a weapon and use it against Sgt. Thomas as he ran for safety. Because the trial court applied the correct rule of law supported by competent and substantial evidence, this Court should affirm the trial court's finding of CCP.

[6] Initial Brief at page 48.

III. THE TRIAL COURT DID NOT ERR BY INSTRUCTING AND FINDING THE MURDER OF SGT. THOMAS WAS HEINOUS, ATROCIOUS, AND CRUEL

Franklin asserts the aggravator of heinous, atrocious, and cruel was improperly instructed and applied to his case because Sgt. Thomas did not experience prolonged physical pain or mental anguish. (IB at 49). Contrary to Franklin's position, the evidence shows Sgt. Thomas was in fear for his life as he ran from Franklin. Sgt. Thomas suffered at least 12 stab wounds of considerable force, and although he collapsed following the fatal blow, Sgt. Thomas was still talking as he received medical attention. The HAC aggravator was applied to Franklin's case, because the murder of Sgt. Thomas involved a prolonged struggled, an attempted escape, and was carried out in a manner which was utterly indifferent to his suffering.

a. Standard of Review

A challenge to a specific jury instruction should be reviewed on an abuse of discretion standard. *Carpenter*, 785 So. 2d at 1200. "[D]iscretion is abused only where no reasonable [judge] would take the view adopted by the trial court." *Buzia*, 926 So. 2d at 1216 (quoting *Huff*, 569 So. 2d at 1249). "A trial court has wide discretion in instructing the jury, and the court's decision regarding the charge to the jury is reviewed with a presumption of correctness on appeal." *Patrick*, 104 So. 3d at 1058 (citing *Carpenter*, 785 So. 2d at 1199–1200).

"A trial court's ruling on an aggravating circumstance is a mixed question of law and fact and will be sustained on review as long as the court applied the right rule of law and its ruling is supported by competent substantial evidence in the record." *Ford*, 802 So. 2d at 1133.

b. The Jury Instruction on Heinous, Atrocious and Cruel.

When evaluating the proposed jury instruction, a trial judge is required to instruct the jury on all aggravating and mitigating factors when credible and competent evidence of such has been presented to the jury. *Welch*, 992 So. 2d at 215 (citing *Stewart*, 558 So. 2d at 420). Although an aggravating factor must be proven beyond a reasonable doubt for purposes of sentencing, a jury instruction on an aggravator "need only be supported by credible and competent evidence." *Welch*, 992 So. 2d at 215 (citing *Hunter*, 660 So. 2d at 252).

The HAC aggravator has been applied to cases where the victim experienced fear prior to their death, was stabbed numerous times, and the defendant was utterly indifferent to their suffering. *See Hall v. State*, 87 So. 3d 667, 672 (Fla. 2012); *Perez v. State*, 919 So. 2d 347, 379 (Fla. 2005). In the present case, the undisputed testimony established that Franklin attacked Sgt. Thomas without provocation. (R31: 2052, 2060; R34: 2404 – 05; R36: 2731 – 32). According to Franklin, Sgt. Thomas was scared enough to attempt to use his panic button and radio, but Franklin knocked them away. (R31: 2053; R36: 2752). Sgt. Thomas

tried to escape and was only prevented by Franklin's continued assault. (R34: 2503; R36: 2711 – 12, 2735 – 38, 2776). Franklin then stabbed Sgt. Thomas at least 12 times. (R35: 2638). Given the nature of Sgt. Thomas' wounds the medical examiner determined that Sgt. Thomas was stabbed with a considerable amount of force. (R35: 2641). It was also established through lay witnesses and expert testimony that Sgt. Thomas was conscious for the attack and alive following the fatal stabbing. (R32: 2159). Based on the undisputed evidence presented to the jury, the trial court did not err in giving the HAC instruction to the jury because credible and competent evidence showed the murder of Sgt. Thomas was HAC.

c. Sgt. Thomas' Murder was Heinous, Atrocious, and Cruel.

"The HAC aggravator may be applied to torturous murder where the killer was utterly indifferent to the suffering of another." *Hall*, 87 So. 3d at 672. In addition, this Court "has repeatedly upheld the HAC aggravating circumstance in cases where the victim has been viciously stabbed numerous times." *Perez*, 919 So. 2d at 379; *see, e.g., Guzman v. State*, 721 So. 2d 1155, 1159 – 60 (Fla. 1998); *Mahn v. State*, 714 So. 2d 391, 399 (Fla. 1998); *Rolling v. State*, 695 So. 2d 278, 296 (Fla. 1997). "The victim's mental state may be evaluated for purposes of such determination in accordance with a common-sense inference from the circumstances." *Hall*, 87 So. 3d at 672 (quoting *Swofford v. State*, 533 So. 2d 270, 277 (Fla. 1988)).

The evidence presented at trial showed that Sgt. Thomas was stabbed or cut with the knife at least 12 times. (R35: 2638). There were eight total defensive wounds to his arms as well as the injuries to Sgt. Thomas' head, neck and chest. (R35: 2638, 2640 – 46). The major injuries included a stab to the left side of Sgt. Thomas' scalp which was four inches deep. (R35: 2640). This wound fractured the left temporal bone and the outer table of the skull, and required a considerable amount of force to inflict. (R35: 2641). This wound was not fatal. (R35: 2641).

Sgt. Thomas was stabbed in the right side of his face along the jawbone as well. (R35: 2642). This wound was about two inches deep through the soft tissue of the cheek. (R35: 2643). This wound was not fatal. (R35: 2643). There was a stab wound to the left side of Sgt. Thomas' neck about a half inch deep, which injured the muscles near the clavicle and collar bone. (R35: 2643 – 44). This wound was not fatal either. The fatal wound to Sgt. Thomas was a stab to the left side of his chest and neck. (R35: 2645). This wound cut the jugular vein and sub-clavian artery and also punctured the left lung. (R35: 2644).

Sgt. Thomas did not die instantly. (R35: 2647). He first went into shock and lost about 1/5 of his blood, which included 900 cubic centimeters of blood into his chest cavity, which made breathing difficult due to a collapsed lung. (R35: 2645, 2647). Sgt. Thomas was conscious for some time. (R32: 2159; R35: 2647). Sgt.

Stacy Puttere noticed Sgt. Thomas moving his lips and trying to talk as he was being loaded on the stretcher and taken to the medical unit. (R32: 2159).

Franklin openly admitted to sucker punching Sgt. Thomas, and then engaging in a struggle within the cell. (R36: 2731 – 32, 2750 – 51, 2778). As Sgt. Thomas fought with Franklin, he tried to grab for his radio and panic button to call for assistance, but Franklin prevented Sgt. Thomas from receiving any help. (R36: 2752). After he escaped, Sgt. Thomas tried to make his way out of the quad to safety, but once again Franklin intervened and prevented Sgt. Thomas from reaching safety. (R36: 2711, 2735 – 38, 2777).

The evidence in this case shows the aggravator of HAC was warranted. First, Sgt. Thomas was aware of his own peril and experienced emotional strain as he attempted to push his panic button, call for help on the radio, and escape the attack from Franklin. (R9: 1729 – 30); *See Allred v. State*, 55 So. 3d 1267, 1280 (Fla. 2010) (finding the victim's fear, panic, and knowledge of impending death enough to establish HAC in shooting death); *Lynch v. State*, 841 So. 2d 362, 369 (Fla. 2003). Second, Sgt. Thomas was conscious throughout the attack and even after the attack ended, as Sgt. Puttere saw him trying to talk as he was taken to the medical unit. *See Duest v. State*, 855 So. 2d 33, 47 (Fla. 2003) (finding HAC applicable where the victim was stab 12 times and remained conscious eventually drowning in his own blood); *Zommer v. State*, 31 So. 3d 733, 747 (Fla. 2010). And

third, Sgt. Thomas was stabbed multiple times and lost more than 1/5 of his blood, before going into shock and dying. *See Francis v. State*, 808 So. 2d 110, 134 – 35 (Fla. 2001) (noting the HAC aggravator has been upheld in cases where the victim was repeatedly stabbed); *Duest*, 855 So. 2d at 46 – 47 (finding the evidence of prolonged suffering was evident in the victim's stab wounds, consciousness, and aspirated blood from a collapsed lung); *Guzman*, 721 So. 2d at 1159.

The trial court applied HAC based on: (1) the number of stab wounds; (2) Sgt. Thomas being conscious throughout the attack; (3) the fact the defendant's knife required a great deal of force to be used effectively; and (4) Sgt. Thomas' emotional fear and panic. (R9: 1728 – 30). Nothing in the evidence presented to the jury established that Sgt. Thomas was killed quickly without foreknowledge of his impending death. The fact the actual stabbing may have only taken 30 seconds is but one part of the entire struggle between Franklin and Sgt. Thomas. For Sgt. Thomas this incident began when he was initially attacked in Franklin's cell and did not end until he lost consciousness after being taken to the medical unit of CCI. Therefore, because the trial court applied the correct rule of law supported by competent and substantial evidence, this Court should affirm the finding of HAC.

IV. THE TRIAL COURT DID NOT ERR IN INSTRUCTING THE JURY THAT SGT. THOMAS WAS A LAW ENFORCEMENT OFFICER ENGAGED IN THE LAWFUL PERFORMANCE OF HIS DUTIES.

Franklin contends Sgt. Thomas was not a law enforcement officer engaged in the lawful performance of his duties for purposes of the statutory aggravating circumstance and the trial court erred by instructing the jury as such. (IB: 55). The foundation of this argument lies in the legislature's failure to define "law enforcement officer" within § 921.141, and therefore Franklin asserts he is entitled to relief under the Rule of Construction. (IB: 57). Nevertheless two statutes within the Florida Criminal Code specifically address violence against law enforcement officers specifically include a correctional officer within their definitions and therefore may be consulted for statutory interpretation. As such, the legislative intent in enacting § 921.141(5)(j) was to include a correctional officer within the aggravator of murder of a law enforcement officer.

a. Standard of Review

"The interpretation of a statue is a purely legal matter and therefore subject to the de novo standard of review." *Kephart v. Hadi*, 923 So. 2d 1086, 1089 (Fla. 2006).

A challenge to a specific jury instruction should be reviewed on an abuse of discretion standard. *Carpenter*, 785 So. 2d at 1200. "[D]iscretion is abused only where no reasonable [judge] would take the view adopted by the trial court."

Buzia, 926 So. 2d at 1216 (quoting *Huff*, 569 So. 2d at 1249). "A trial court has wide discretion in instructing the jury, and the court's decision regarding the charge to the jury is reviewed with a presumption of correctness on appeal." *Patrick*, 104 So. 3d at 1058 (citing *Carpenter*, 785 So. 2d at 1199–1200).

b. The Statutory Construction of § 921.141(5)(j).

"When construing a statute, [this Court] strive[s] to effectuate the Legislature's intent." *Kasischke v. State*, 991 So. 2d 803, 807 (Fla. 2008). "To discern legislative intent, courts must consider the statute as a whole, including the evil to be corrected, the language, title, and history of its enactment, and the state of law already in existence on the statute." *Bautista v. State*, 863 So. 2d 1180, 1185-86 (Fla. 2003) (citing *State v. Anderson*, 764 So.2d 848, 849 (Fla. 3d DCA 2000) (citing *McKibben v. Mallory*, 293 So.2d 48, 52 (Fla.1974)).

The first step is to examine the plain language of the statute. *Kasischke*, 991 So. 2d at 807. In the present case, Franklin is correct in his claim that the term *law enforcement officer* has not been defined within chapter 921 of the Florida Criminal Code. Thus, "where the legislative intent is unclear from the plain language of the statue, we look to the canons of statutory construction." *Kasischke*, 991 So. 2d at 811 (citing *Joshua v. City of Gainsville*, 768 So. 2d 432, 435 (Fla. 2000)). The canon of e*xpressio unis est exclusion alterius*, holds the mention of one thing implies the exclusion of another. *State v. Hearns*, 961 So. 2d

211, 219 (Fla. 2007). Here, this means the aggravator of § 921.141(5)(j) is meant to apply to only law enforcement officers; however, without a definition of law enforcement officer, this Court must look to other canons for the legislative intent. The ultimate question becomes *who qualifies as a law enforcement officer for the purposes of § 921.141(5)(j)*?

"The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." *Larimore v. State*, 2 So. 3d 101, 106 (Fla. 2008) (quoting *Fla. Dep't of State v. Martin*, 916 So. 2d 763, 768 (Fla. 2005). More easily stated, related statues may be read together in order to give them full effect and meaning and to guard against ambiguity. *See Larimore*, 2 So. 3d at 106 (quoting *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 199 (Fla. 2007). The purpose of § 921.141(5)(j) is to enhance the penalty for the first-degree murder of a law enforcement officer, thus this Court should look to other statues that punish violence against law enforcement officers for guidance.

Presently, two other statutes within the Florida Criminal Code address violence against law enforcement officers, and each of those statues include a correctional officer within its protections. First, § 775.0823 (Fla. 2014) is titled "Violent Offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges." § 775.0823 provides for an

automatic increase of the potential criminal penalty when a crime is committed against a law enforcement officer or correctional officer. Within this section, a correctional officer is separately enumerated, but given the same protections. Specifically, in the case of first-degree murder of a correctional officer this statute states "[fo]r murder in the first-degree as described in s. 782.04(1), if the death sentence was not imposed, a sentence of imprisonment for life without the eligibility for release." § 775.0823 Fla. Stat. (2014). Second, § 784.07 (Fla. 2014) governs assault and battery against a law enforcement officer. § 784.07(1)(d) specifically includes a correctional officer within the definition of *law enforcement officer*. Therefore, when examined under the doctrine of *in pari materia* the legislative intent of § 921.141(5)(j) becomes clear; a correctional officer is equated with a law enforcement officer and entitled to all the same protections under the law.

The other canons of statutory construction are not of assistance in interpreting § 921.141(5)(j). *Ejusdem generis* applies when a general phrase is followed by a list of specifics. *State v. Hearns*, 961 So. 2d 211, 219 (Fla. 2007). The complained of aggravator has no such general phrase or list of specifics. Next, the doctrine of the last antecedent applies '"the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence."' *Kasischke*, 991 So. 2d at 811 (quoting 2A Norman J. Singer & J.D. Shambie Singer, *Statutes and*

Statutory Construction § 47.33 (7th ed. 2007). In this case, no legislative intent can be derived from the words or phrases preceding the use of "law enforcement officer" in § 921.141(5)(j).

Finally, Franklin seeks to avail himself of the Rule of Construction, also referred to as the rule of lenity. This Court has stated "the rule of lenity is a canon of last resort." *Kasischke*, 991 So. 2d at 814 (citing *U.S. v. Shabani*, 513 U.S. 10, 17, 115 S.Ct. 382 (1994) (stating "The rule of lenity, however, applies only when, after consulting traditional canons of statutory construction, we are left with an ambiguous statute."). This Court only looks to the rule of lenity if, after examining all other canons of statutory construction the legislative intent is still ambiguous. In this case, the doctrine of *in pari materia* plainly shows the legislative intent of § 921.141(5)(j). The aggravator of murder of a law enforcement officer in lawful performance of his duties was meant to include a correctional officer within its protections because a correctional officer is equated with a law enforcement officer within all other statues that address violence against law enforcement officers. Therefore, the trial court did not err in giving the required instruction and this Court should affirm the application of the aggravator *the victim of the capital felony was a law enforcement officer engaged in the performance of his official duties*.

c. Harmless Error

"When this Court strikes an aggravating factor on appeal, 'the harmless error test is applied to determine whether there is no reasonable possibility that the error affected the sentence.'" *Cole v. State*, 36 So. 3d 597, 609 (Fla. 2010) (quoting *Williams v. State*, 967 So. 2d 735, 765 (Fla. 2007)). In the present case, the trial court found the aggravator of § 921.141(5)(j) – the victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties and merged it with the aggravator of § 921.141(5)(g) – the capital felony was created to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws. (R9: 1733). Because the trial court did not assign any weight to this aggravator there is no reasonable possibility the error had any effect on the sentence. Therefore, any error would be harmless because the error was not weighed against the minimal mitigation under the trial court's sentence.

V. THE TRIAL COURT DID NOT ERR IN INSTRUCTING AND FINDING AS AN AGGRAVATING CIRCUMSTANCE THE MURDER OF SGT. THOMAS WAS COMMITTED TO DISRUPT OR HINDER THE LAWFUL EXERCISE OF ANY GOVERNMENTAL FUNCTION OR ENFORCEMENT OF THE LAWS.

Franklin asserts the trial court erred by instructing and finding the aggravating circumstance the murder was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws. (IB: 68). Franklin maintains that per the statutory language of § 921.141(5)(g) the disruption of the Columbia Correctional Institution must have been the primary objective when the murder of Sgt. Thomas was committed. (IB: 68). This Court has previously rejected this argument. In addition, Sgt. Thomas was murdered because of his official duties as a state correctional officer, and the aggravator at issue was intended to apply in precisely this situation.

a. Standard of Review

A challenge to a specific jury instruction should be reviewed on an abuse of discretion standard. *Carpenter*, 785 So. 2d at 1200. "[D]iscretion is abused only where no reasonable [judge] would take the view adopted by the trial court." *Buzia*, 926 So. 2d at 1216 (quoting *Huff*, 569 So. 2d at 1249). "A trial court has wide discretion in instructing the jury, and the court's decision regarding the charge to the jury is reviewed with a presumption of correctness on appeal." *Patrick*, 104 So. 3d at 1058 (citing *Carpenter*, 785 So. 2d at 1199–1200).

"A trial court's ruling on an aggravating circumstance is a mixed question of law and fact and will be sustained on review as long as the court applied the right rule of law and its ruling is supported by competent substantial evidence in the record." *Ford*, 802 So. 2d at 1133.

b. The Disrupt or Hinder Any Governmental Function Aggravator

Franklin asserts that because he did not murder Sgt. Thomas with the intention of disrupting the operations of the CCI prison the aggravator of § 921.141(5)(g) should not apply. (IB: 68). Franklin's position is predicated on a plain reading of the statue.

This Court has previously rejected this argument and interpreted § 921.141(5)(g) to apply when the victim was "performing a legitimate government function." *Phillips v. State*, 705 So. 2d 1320, 1322 (Fla. 1997) (finding the murder of defendant's probation officer disrupted the government functions of the probation officer, by preventing the reporting the defendant's probation violations.) (citing *Jones v. State*, 440 So. 2d 570, 577 – 78 (Fla. 1983) (finding that police officer shot while on duty and in patrol car, traveling from an unrelated investigation qualified as performing a legitimate government function)); *Tafero v. State*, 403 So. 2d 355 (Fla. 1981) (holding the murder of two law enforcement officers who were attempting to enforce the laws of the state qualified for the aggravator of disrupt or hinder the performance of any governmental function).

Nevertheless, Franklin asks this Court to recede from its interpretation of § 921.141(5)(g), because a view, such as the one adopted by the trial court, which seeks to apply the aggravator to the murder of any government official performing their job would lead to absurd results. (IB at 66). While there is merit to Franklin's argument, in this case the murder of Sgt. Thomas and the resulting disruption of the prison is the exact situation for which § 921.141(5)(g) was intended.

As outlined by the trial court, the murder of Sgt. Thomas, a dorm Sergeant with the Dept. of Corrections, immediately disrupted the function of T Dorm and the CCI prison. (R9: 1726 – 27). Because Sgt. Thomas was called away from the control room to attend to Franklin's fictitious maintenance call, Ofc. Meyer was thereby confined to the control room of T Dorm and could not leave to assist anyone be they an inmate or a guard regardless of the circumstances. (R9: 1726 – 27). "The defendant's conduct also caused many of the other inmates to engage in disruptive conduct – some of the inmates were cheering, and many were up against the glass kicking and screaming." (R9: 1727). Although Franklin was housed in quad 3, "[t]estimony established that the entire dorm was affected. Even after the Defendant had inflicted the fatal wounds on the victim, the Defendant's disruptive behavior continued – he returned to Quad 3 and informed his fellow inmates of what he had done by making the throat-slashing gesture(s)" (R9: 1727).

As further evidence of this disruption, when assistance arrived, the officers first had to regain control over the dorm and order inmates back into their cells." (R9: 1727).

Franklin continued to hinder law enforcement when he tied the fire exit door shut, which prevented the prison DART squad from entering the quad and taking control of the situation. (R9: 1727). Franklin then broke the sprinkler in quad 2, which flooded T Dorm to the ankle and washed away potential evidence in the murder of Sgt. Thomas. (R9: 1727). "Prison officials had to shut the water off, which affected many aspects of the operation of the prison including providing food to all of the prison's inmates." (R9: 1727).

Moreover, it cannot be understated that Franklin murdered Sgt. Thomas because he was a prison guard. (R9: 1728). "The victim in this case was a sergeant tasked with guarding the Defendant; the Defendant . . . did not agree or approve of the government agent's conduct." (R9: 1728). Each time this Court has upheld this aggravator it involved a similar situation where the government actor was law enforcement or directly tied to law enforcement in official performance of their duties. *See Phillips*, 705 So. 2d at 1322; *Jones*, 440 So. 2d at 577 – 78; *Tafero*, 403 So. 2d 355. Here, not only did the murder of Sgt. Thomas disrupt or hinder the immediate control of T Dorm, but also affected the entire prison for a period of time. Therefore, this Court should affirm the trial court's

ruling and uphold the application of the disrupt or hinder a governmental function aggravator.

c. Harmless Error

In the event this Court determines the aggravating factor of *disrupt or hinder a governmental function* does not apply, the next step is to examine the case for harmless error. "When this Court strikes an aggravating factor on appeal, 'the harmless error test is applied to determine whether there is no reasonable possibility that the error affected the sentence.'" *Cole*, 36 So. 3d at 609 (quoting *Williams*, 967 So. 2d at 765). In the present case, the aggravators of HAC, CCP, prior capital felony, victim was a law enforcement officer in lawful performance of his duty, and defendant was under a sentence of imprisonment at the time of the murder would still apply. HAC, CCP, and prior capital felony are the three weightiest aggravators in the sentencing scheme. *Gregory v. State*, 118 So. 3d 770, 786 (Fla. 2013) (citing *Silvia v. State*, 60 So. 3d 959, 974 (Fla. 2011)). In addition Franklin presented minimal mitigation. Therefore, any error in applying the aggravating circumstance of disrupt or hinder a governmental function is harmless because no reasonable possibility exists that the error affected the sentence.

VI. THIS COURT HAS REPEATEDLY REJECTED CLAIMS THAT FLORIDA'S SENTENCING PROCEDURES ARE UNCONSTITUTIONAL PURSUANT TO *RING v. ARIZONA*.

Franklin asserts the trial court imposed a death sentence in violation of the Sixth Amendment to the United States Constitution in light of the United States Supreme Court holding in *Ring v. Arizona*, 536 U.S. 584 (2002). (IB: 71). This is a facial challenge to the constitutionality of Florida Statute § 921.141, which governs Florida's capital sentencing procedures. Franklin's argument lacks any merit as this court has repeatedly and recently rejected identical claims.

In *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002), *cert denied*, 123 S.Ct. 662 (2002), this Court considered whether the holding in *Ring* applied to the Florida capital sentencing scheme. *Bottoson*, 833 So. 2d 694 – 95. This Court declined to extend *Ring* to Florida's capital sentencing scheme and noted that for 25 years, the United States Supreme Court has reviewed Florida's sentencing procedures and specifically did not address any perceived conflict between *Ring* and Florida's sentencing procedures. *Id*. at 695.

In *King v. Moore*, 831 So. 2d 143 (Fla. 2002), *cert. denied*, 123 S.Ct. 657 (2002), this Court again rejected a claim that *Ring* should be extended to Florida's sentencing procedures. Most notably, this Court took into consideration the actions of the United States Supreme Court in deciding both *Ring* and *King* stating:

The United States Supreme Court in February 2002 stayed King's

> execution and placed the present case in abeyance while it decided *Ring*. That Court then in June 2002, issued its decision in *Ring*, summarily denied King's petition for certiorari, and lifted the stay without mentioning *Ring* in the *King* order.

King, 831 So. 2d at 144. This Court inferred that the United States Supreme Court considered this specific issue and rejected it when it denied certiorari in *King*.

In *Peterson v. State*, 94 So. 3d 514 (Fla. 2012), *cert. denied*, 133 S.Ct. 973 (2012), the defendant made an identical claim to Franklin's by inviting this Court to reconsider its decisions in *Bottoson* and *King*. *Peterson*, 94 So. 3d at 538. This Court rejected Peterson's argument finding no new arguments have been presented which would require this Court to reconsider its position. *Id*. More recently, in *Hurst v. State*, - So. 3d – (Fla. 2014), 39 Fla. L. Weekly S293, *10 (May 1, 2014), this Court again rejected an invitation to reconsider its position in *Bottoson* and *King*, noting that Florida's capital sentencing scheme has repeatedly been upheld as constitutional. *Hurst*, 39 Fla. L. Weekly S293, *10 (citing *Baker v. State*, 71 So. 3d 802, 823 – 24 (Fla. 2011), *cert. denied*, - U.S. -, 132 S.Ct. 1639 (2012); *Darling v. State*, 966 So. 2d 366 (Fla. 2007); *Frances v. State*, 970 So. 2d 806, 822 (Fla. 2007).

Finally, while Franklin invites this court to reconsider its longstanding judicial precedent of *Bottoson* and *King*, he patently ignores the fact that he was previously convicted of a violent capital felony before being sentenced to death for the murder of Sgt. Ruben Thomas. This Court has consistently rejected *Ring* claims in cases

such as this where the defendant has been previously convicted of a felony. *See Chandler v. State*, 75 So. 3d 267, 269 (Fla. 2011); *Baker*, 71 So. 3d at 824; *Johnson v. State*, 969 So. 2d 938, 961 (Fla. 2007); *Darling*, 966 So. 2d at 387. Therefore this claim should be denied as it lacks any merit.

VII. THE MURDER OF SGT. RUBEN THOMAS IS AMONG THE MOST AGGRAVATED AND LEAST MITIGATED OF FIRST-DEGREE MURDERS.

Although not raised on direct-appeal, this Court has an obligation to review the proportionality of every death sentence. In the instant case, the murder of Sgt. Ruben Thomas is among the most aggravated and least mitigated of first-degree murders, and Franklin's death sentence is proportionate to cases with similar aggravators and mitigators.

a. Standard of Review

"A trial court's ruling on a pure question of law is subject to de novo review." *Demps v. State*, 761 So. 2d 302, 306 (Fla. 2000).

b. Franklin's Sentence is Proportional

In determining whether death is a proportionate penalty in a given case this Court conducts "a comprehensive analysis in order to determine whether the crime falls within the category of both the most aggravated and least mitigated of murders, thereby assuring uniformity in the application of the sentence." *Bright v. State*, 90 So. 3d 249, 262 (Fla. 2012) (quoting *Williams v. State*, 37 So. 3d 187, 205 (Fla. 2010)). A direct-appeal determination of death penalty proportionality is not a matter of simply counting the aggravating and mitigating factors. As this Court explained in *Woodel v. State*, 985 So. 2d 524, 532 (Fla. 2008):

> In weighing the aggravating circumstances against the mitigating factors, the court understands that the weighing process is not simply

> an arithmetic exercise. The court's role is to consider the quality of the factors to be weighed, not the quantity of those factors. Accordingly, the court considers the nature and quality of the aggravators and mitigators that is has found to exist.

In reviewing the trial court's determination of the factual foundation for its death-penalty decision, the Court generally defers to the trial court, that is, whether a factual finding is supported by "competent, substantial evidence." *Allred v. State*, 55 So. 3d 1267, 1277 – 1278, 1281 (Fla. 2010).

In the instant case, the trial court found six statutory aggravators and assigned weight accordingly:

(1) the capital felony was committed by a person who was under a sentence of imprisonment at the time of the murder – (Great Weight). (R9: 1724);

(2) the defendant was previously convicted of a prior capital felony which involved the use of violence – (Great Weight). (R9: 1724 – 25);

(3) the capital felony was committed to disrupt or hinder the lawful exercise of any governmental function – (Substantial Weight). (R9: 1726 – 28);

(4) HAC – (Very Great Weight). (R9: 1728 – 30);

(5) CCP – (Very Great Weight). (R9: 1730 – 33); and

(6) the victim of the capital felony was a law enforcement officer engaged in the performance of his official duties – (No Weight because merged with the Disrupt/Hinder Governmental Function aggravator). (R9: 1733).

The jury recommended a death sentence by a vote of nine to three. (R40:

3238). Although the trial court did not find any statutory mitigators, it did assign weight to seven non-statutory mitigators:

(1) Franklin's childhood and adolescence were troubled, unstable, and violent – (Little Weight). (R9: 1736 – 38);

(2) Franklin was a great brother and uncle – (Little Weight). (R9: 1738);

(3) Franklin suffered from a head injury from a gunshot as a teenager – (Some Weight). (R9: 1738 – 39);

(4) Franklin's family effectively abandoned him – (Little Weight). (R9: 1739);

(5) Franklin intervened when a fellow inmate was being attacked – (Some Weight). (R9: 1739 – 40);

(6) Franklin exhibited good behavior during the trial – (Little Weight). (R9: 1740); and

(7) Franklin exhibited remorse – (Very Little Weight). (R9: 1740).

Based on the underlying facts, aggravating and mitigating circumstances, this case is among the most aggravated and least mitigated of first-degree murders. The aggravators of CCP, HAC, and prior capital felony are the most serious and weightiest aggravators set forth in the statutory scheme. *Gregory*, 118 So. 3d at 786 (citing *Silvia*, 60 So. 3d at 974); *Buzia*, 926 So. 2d at 1216 (quoting *Larkins v. State*, 739 So. 2d 90, 95 (Fla. 1999). Moreover, this Court "has previously

affirmed the death penalty in a single-aggravator case where the single aggravator was a prior violent felony." *Armstrong v. State*, 73 So. 3d 155, 175 (Fla. 2011); *see Bevel v. State*, 983 So. 2d 505, 524 (Fla. 2008) (citing *Ferrell v. State*, 680 So. 2d 390 (Fla. 1996)); *see also Lindsey v. State*, 636 So. 2d 1327, 1329 (Fla. 1994).

In *Kilgore v. State*, 688 So. 2d 895, 896 – 97 (Fla. 1996), the defendant was serving a life sentence for first-degree murder. While serving his sentence, the defendant murdered another inmate with a homemade prison knife. *Kilgore*, 688 So. 2d at 896 – 97. The aggravators of prior capital felony, and under a sentence of imprisonment were applied and given weight. *Id*. at 897. The trial court also applied both statutory mental health mitigators. *Id*. at 897. Nevertheless, this Court upheld Kilgore's sentence of death as proportional because the aggravators outweighed the mitigators.

With the addition of the HAC and CCP aggravators combined with no statutory mitigation, this case has significantly more aggravation and considerably less mitigation than *Kilgore*. The trial court in pronouncing its sentence stated "the aggravating factors clearly, and convincingly, and beyond a reasonable doubt outweigh the mitigating factors. In fact, the mitigating evidence is 'minimal and does not come close to outweighing the aggravating factors.' *McWatters v. State*, 36 So. 3d 613, 642 (Fla. 2010)." (R9: 1741). "Here, the nature and quality of the mitigating evidence pales in comparison to the enormity of the aggravating factors

proven in this case." (R9: 1741). Therefore, this Court should affirm Franklin's sentence of death as among the most aggravated and least mitigated of first-degree murders.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court affirm the convictions and sentences.

CERTIFICATE OF SERVICE

I CERTIFY that copy of the foregoing document has been furnished to Nada Carey, Counsel for Appellant, nada.carey@flpd2.com, Leon County Courthouse, 301 S. Monroe Street, Tallahassee, Florida 32301, by email this 19th day of September, 2014.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Times New Roman 14-point font.

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